

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 31, 2019

Thru: Toby Baker, Executive Director

Thru:  Brent Wade, Deputy Director
Office of Waste

From:  Earl Lott, Director
Waste Permits Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste

Suggested short title: RCRA Authorization for Parts of Federal Rule Clusters XXIV and XXV (*RCRA Package 2*)

Introduction and reasons for the rulemaking:

In order for the State of Texas to be consistent with certain federal solid and hazardous waste requirements and with the Resource Conservation and Recovery Act (RCRA), the TCEQ periodically incorporates specific United States Environmental Protection Agency (EPA) rule changes into state rules. Parts of the EPA federal rule changes in Rule Clusters XXIV and XXV are included in this rulemaking, amending 30 Texas Administrative Code (30 TAC) Chapter 335.

In addition to federal rule changes, the rulemaking will propose increases and a maximum cap to the generation fee and the industrial solid waste and hazardous waste management fee.

Scope of the proposed rule:

The proposed rulemaking would adopt federal rule changes into state rules and implement a state-initiated fee increase.

A.) Scope required by federal regulations or state statutes:

This rulemaking initiative will update 30 TAC Chapter 335 to include federal rule changes that are both optional and non-optional. The revisions are set forth in parts of RCRA Clusters XXIV and XXV. Each cluster contains one checklist, and each checklist explains specific rule language additions or changes.

RCRA Cluster XXIV - Checklist 233

Rule changes in Checklist 233 revise several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of RCRA. The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations encourage reclamation in a way that does not result in increased risk to human health and the environment. The checklist is not optional; however, certain sections are optional.

RCRA Cluster XXV - Checklist 237

Rule changes in Checklist 237 revise the existing hazardous waste generator regulatory program by reorganizing the regulations to improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making

technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. The checklist is not optional; however, most provisions are equivalent or less stringent.

B.) Additional staff recommendations:

Based on discussions about the declining balance in the Waste Management Account (0549), staff are proposing increases to two waste fees – the generator fee and the industrial solid waste and hazardous waste management fee – to specified maximum amounts. Language would also be added to allow the commission to set variable fee rates at or below the maximum amounts to better respond to changing economic conditions and to ensure adequate program funding is maintained.

Potential controversial concerns and legislative interest:

Staff are seeking permission to proceed with a formal stakeholder process for this rulemaking during the 86th Legislative Session.

The hazardous waste generator rules (Checklist 237) is of special interest to the regulated community due to extensive regulatory impact and that provisions may be equivalent or less stringent.

The fee increase will be controversial, but the commission has not raised these two fees since 2001 (management fee) and 2002 (generator fee). In addition, the commission will not automatically raise the yearly fee to the maximum amounts; instead it will raise the fees over multiple years and stop at a level that maintains adequate program funding.

Potential alternatives:

In order to maintain RCRA authorization, amendments that are not optional must be adopted. The commission may opt to not incorporate the federal amendments that are optional, as the RCRA program authorization from the EPA will not be impacted; however, the commission will not be in alignment with the EPA RCRA program. Such differences may make compliance more difficult for the regulated community, especially for entities with facilities in multiple states. In this rulemaking, all federal rule changes are proposed to be adopted.

Effect on the:

A.) Regulated community: The regulated communities that will be affected by this rulemaking are businesses and industries involved in the generation, treatment, storage, and/or disposal of hazardous and industrial waste. This federal rule adoption initiative will not create a special group of affected persons.

B.) Public: There is no anticipated effect on the public by the adoption of these rules. The rule changes will primarily affect the regulated community.

C.) Agency programs: By adoption of these rules, the state may pursue expanded RCRA authorization from the EPA.

Proposed schedule and constraints:

Anticipated Proposal Date: Summer 2020

Anticipated Public Comment Period: Summer 2020

Anticipated Adoption Date: Fall 2020

Planned Stakeholder involvement:

Staff received a request to hold a formal advisory group for the Hazardous Waste Generator Rule Improvements Rule (Checklist 237). In addition to the generator improvement rules, staff propose to have the rulemaking advisory group address changes to the generator regulations (Checklist 233) and the increases to the waste fees.

Statutory authority:

The rule change would be proposed under the authority of THSC. §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act; THSC, §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and municipal hazardous waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; THSC, §361.082, which authorizes the commission to require and to issue permits governing the construction, operation, and maintenance of hazardous waste facilities used to store, process, or dispose of hazardous waste; and Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties.

Direction and Guidance:

Rule or Non-Rule Project number: 2019-086-335-WS

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Attachments:

Proposed RCRA Package 2 - Cluster and Checklist Summary

NOTE: *TR will submit electronic notice to the following after ED Briefing:*

Jim Rizk
Barbara Robinson
Office of General Counsel

Proposed RCRA Package 2 - January 2019

Cluster	Checklist	Rule Title	Rule Description	Federal Effective Date	Revisions Optional?	State Deadline	30 TAC Chapter
XXIV	233	Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule	Revised definition of solid waste	7/13/2015 & 5/30/2018	No, although certain sections are optional	7/1/2016	335
XXV	237	Hazardous Waste Generator Rule Improvements	Codification and restructuring of generator rules	5/30/2017	No	7/1/2018	335
N/A	N/A	Fee increase and set maximums - generator and waste management fee	Fee increase to maximums and language to set rate yearly - 335.323, 335.325	N/A	N/A	N/A	335